



# **FACT SHEET**

## **EPA Activities Related to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)**

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## Why should I be interested in RFA/SBREFA?

EPA has an ongoing commitment to minimize the burden of our regulations on small entities to the extent feasible while still meeting our statutory requirements. The Small Business Regulatory Enforcement Fairness Act (SBREFA), passed in March 1996, amended the Regulatory Flexibility Act (RFA) to further the Agency's partnerships with small entities in our rulemakings. One of the important goals of the RFA, as amended by SBREFA, is to provide small entities with an expanded opportunity to participate in the development of certain regulations. As a small entity, you may be called upon to present the unique interests of your small business, government, or non-profit in relation to a particular EPA rulemaking, your participation in the rulemaking process will ensure that EPA hears small entities' concerns.

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## What are the major components of SBREFA?

**Strengthens the Regulatory Flexibility Act (RFA).** SBREFA amended the Regulatory Flexibility Act to strengthen the RFA's analytical and procedural requirements. These requirements ensure that small entities have a meaningful opportunity to participate in the development of certain regulations that may significantly affect them.

**Increases Small Entity Compliance Assistance.** SBREFA requires EPA to answer fact-specific questions and, for certain rules, to publish small entity compliance guides. We must also establish a policy or program to reduce or waive civil penalties for certain violations by small entities.

**Provides for Congressional Review of Final Rules.** SBREFA provides for expedited Congressional review of most final regulations, even those not affecting small entities. This gives Congress the chance to introduce a bill to disapprove the regulation in an expedited fashion.

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## What effect does SBREFA have on EPA's rulemaking?

SBREFA is consistent with EPA Administrator Carol Browner's ongoing efforts to enhance stakeholder involvement, particularly by small entities, in the rulemaking process. This involves outreach to the regulated community, state and local governments, environmental groups, the general public, and the small entities within these broader categories. SBREFA established certain formal procedural and analytical requirements (outlined below) for the limited number of our rules with the potential to impose a significant economic impact on a substantial number of small entities. Perhaps equally important, is EPA's commitment to give specific attention to the concerns of small entities, even in the more frequent cases where small entities are not significantly affected.

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## What are the RFA/SBREFA requirements for rule proposal?

**Initial Regulatory Flexibility Analysis.** Generally, the RFA requires EPA to prepare an Initial Regulatory Flexibility Analysis (IRFA) for each proposed rule, unless the Administrator certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is a document that examines the type and number of small entities potentially subject to the rule, recordkeeping and compliance requirements, and significant regulatory alternatives, among other things.

**Small Business Advocacy Review Panels.** Under the RFA as amended by SBREFA, if we must prepare an IRFA, then we also must convene a Small Business Advocacy Review Panel prior to proposing a rule, unless we certify that the rule will not impose a significant economic impact on a substantial number of small entities. Each Panel is convened by EPA's Small Business Advocacy Chair and includes representatives from the Small Business Administration, the Office of Management and Budget, and the EPA office responsible for the rule. A Panel conducts its own outreach to individuals representative of small entities likely to be regulated by the rule and prepares a report to the Administrator of EPA on potential ways to reduce the potential impact of the rule on small entities. Each Panel report is part of the rulemaking record for deciding the content of the proposed rule.

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## What are the RFA/SBREFA requirements for final rule promulgation?

**Final Regulatory Flexibility Analysis.** For each rule that EPA promulgates and does not certify as having no significant impact on a substantial number of small entities, we must prepare a Final Regulatory Flexibility Analysis (FRFA). The elements of a FRFA are similar to those of an IRFA, specified above. In addition, RFA/SBREFA requires that each FRFA summarize the significant issues raised by public comments on the IRFA, assess these issues and describe any changes made in response to the public comments.

**Small Entity Compliance Guide.** For each final rule where RFA/SBREFA requires preparation of a final regulatory flexibility analysis, the Agency also must issue a Small Entity Compliance Guide providing small entities with a plain language explanation of how to comply with the regulation.

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## What are the compliance assistance provisions of SBREFA?

In addition to compliance guides, SBREFA Section 223 requires EPA to design and implement a policy or program to support the rights of small entities in enforcement actions. It specifically provides for the reduction, and under appropriate circumstances, the waiver of civil penalties for certain violations by small entities where the violator demonstrates good faith efforts to correct violations and comply with the law.

Section 213 of SBREFA requires agencies to provide informal guidance on existing statutes and regulations to small entities and, relying to the extent practicable on existing resources, establish a program to provide that guidance. In particular, we must provide small entities with guidance on statutes and regulations administered by the Agency, including the application of law to specific sets of circumstances supplied by small entities.

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## What are the congressional review provisions of SBREFA?

Subtitle E of SBREFA, commonly known as the Congressional Review Act (CRA), is wholly unrelated to the small entity provisions of SBREFA. Under the CRA, EPA generally must, with a few exceptions, provide each House of Congress and the General Accounting Office with copies of all final rules and their supporting analyses. Major rules (those imposing costs of \$100 million or more annually) submitted under this provision generally may not take effect earlier than 60 calendar days after the date of submission or publication in the Federal Register, whichever is later. Upon receipt of a rule, members of Congress have a specified period of time to introduce a joint resolution of disapproval that will be considered under CRA's expedited review

procedure. If such a resolution is signed by the President, the rule will be invalidated and treated as if it never took effect.

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## What has been the progress to date?

- An EPA SBREFA Task Force, organized in 1996, developed procedures for EPA compliance with the Act. On February 5, 1997, the SBREFA Task Force issued interim guidance for Agency use in implementation of SBREFA.
- To date, the Agency has completed 13 Small Business Advocacy Review Panels in cooperation with SBA and OMB. In each case, the Panels recommended changes to the rule that would mitigate impacts on small entities.
- EPA periodically releases a Tracking Report on Rules Affecting Small Entities. The Agency created this report to track rules of particular interest to small entities (i.e., rules with the potential to affect them). This report also tracks the status of rules that may be subject to certain requirements under the RFA as amended by SBREFA (i.e., convening a Small Business Advocacy Review Panel or issuing a Small Entity Compliance Guide). The report is available from the staff of the Small Business Advocacy Chair (contact info is provided below).
- As required by SBREFA, in March 1998, EPA delivered to Congress reports on SBREFA Section 223 - Penalty Reduction Program for Small Entities and SBREFA Section 213 - Informal Guidance Program. These reports also are available from the Office of the Small Business Advocacy Chair.

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## What other small business activities is EPA engaged in?

For more information on EPA's small business activities, access the U. S. Environmental Protection Agency (EPA) gateway to environmental information and contacts for small businesses at: <http://www.epa.gov/smallbusiness/>. This webpage can provide you with information on environmental technical assistance, environmental laws and regulations and financial assistance.

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## How Do I get more information?

If you want additional information on the RFA as amended by SBREFA, the Agency's small entity compliance assistance efforts, the elements of a regulatory flexibility analysis or the provisions of the Congressional Review Act, contact the staff of the Small Business Advocacy Chair.

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